IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

Crl.MC.No. 2530 of 2007()

CC.1055/2006 of JUDL. MAGISTRATE OF FIRST CLASS, KOTTAYAM

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PETITIONER: ACCUSED

T.MOHAMMED ASHRAF, NO.4/B,
LINK HEIGHTS, PANAMBILLY NAGAR, COCHIN-36.

BY ADV. SRI.P.B.SAHASRANAMAN
SRI.K.JAGADEESH
SRI.T.S.HARIKUMAR

RESPONDENTS: STATE AND DEFACTO COMPLAINANT

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1. STATE OF KERALA REPRESENTED BY
DIRECTOR OF PROSECUTIONS, HIGH COURT OF KERALA,
THIRUVANANTHAPURAM.

2. THE SUB-INSPECTOR OF POLICE,
PAMBADI, KOTTAYAM DISTRICT.

3. SIBY JAMES, MANAGER,
DALIA TOURIST HOME, PAMBADY.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 08/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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Crl.M.C. No.2530 Of 2007

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Dated this the 8th day of August, 2007

ORDER

The petitioner faces indictment in a prosecution under 420 IPC. The crux of the allegations is that the petitioner has deceived the defacto complainant by issuing a cheque drawn on a closed account to him. Cognizance has been taken by the learned Magistrate on the basis of a final report submitted by the Police after due investigation.

2. According to the petitioner he is absolutely innocent. He was granted anticipatory bail by this Court as Annexure A2 order. Thereafter he had no clue of the proceedings at all. He now realises that cognizance has been taken by the learned Magistrate and warrant of arrest was issued to procure his presence. The petitioner is in this circumstances rush to this Court with this petition under Sec.482 Cr.P.C.

3. The learned counsel for the petitioner submits that the allegation against the petitioner are so totally unfounded that powers under Sec.482 Cr.P.C have to be invoked to quash the proceedings against him. Secondly and alternatively it is contended that at any rate, the petitioner may be permitted to surrender before the learned Magistrate and the learned Magistrate may be directed to dispose of

the application for bail on merits and expeditiously. Powers under Sec.482 Cr.P.C has to be invoked sparingly and in exceptional cases only in aid of justice. The mere fact that the inductee may succeed in the probable defences available to him is not a reason to invoke the powers under Sec.482 Cr.P.C. Is there failure or miscarriage of justice? Has there been an abuse of process of the Court? These are the questions which would weigh with the court while considering the invocation of powers under Sec.482 Cr.P.C. I intend to express no final opinion on disputed facts. Suffice it to say that I am satisfied that this is not a fit case where powers under Sec.482 can or ought to be invoked to bring to premature termination of the proceedings initiated on the basis of final report submitted by the Police after due investigation.

4. Needless to say , the petitioner can appear before the learned Magistrate and seek discharge at the stage of Sec.239/240 Cr.P.C. The learned Magistrate must consider such plea on merits and come to appropriate decision.

5. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. The learned Magistrate must consider such application for bail on merits, in

accordance with law and expeditiously. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

6. This Crl.M.C is, in these circumstances, dismissed, but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for regular bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously-on the date of surrender itself. His prayer for discharge will also be considered expeditiously.

(R.BASANT, JUDGE)

sj